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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/686,754
Filing Date: October 10, 2000
Appellant(s): HUCKINS, JEFFREY L.

Timothy N. Trop
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/02/2006 appealing from the Office action mailed 10/28/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,978,845	Reisacher	10-1999
6,078,954	Lakey et al.	6-2000

Hein et al., SNMP, Simple Network Management Protocol Version 2, 1994, pages 339-340

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1,6-7,11, 15-16, 20, 22-24, 26 and 28-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Reisacher (5,978,845).

3. Cited by applicant on paper received 02/17/2005.

4. As to claims 1,11,20,26 and 29, Reisacher taught receiving on a client a message (col. 5, lines 67, fig6, REQ(var1,var2) from a server (fig. 2, element 24) addressed to said client (fig. 3, col. 5, line 29) ; and scheduling a data upload session based on said message (col. 6, line 5-32).

5. As to claim 6 and 15, Reisacher taught locating an identifier within said message that specifies an agent on said client to handle said message, and forwarding said message to said agent (col. 5, line 63 – col. 6, line 15).

6. As to claim 7, 16, and 24, Reisacher taught enabling said agent to upload state data to said server over a

back channel during a data upload session.

7. As to claims 22, 28, and 30 Reisacher taught storage stores instructions that enable said processor-based device to locate an identifier within said message that specifies an agent on said device to handle said message and forward said message to said agent (col. 5, line 17 – col. 6, line 39).

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 4-5, 8-10, 14, 17-19, 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reisacher as applied to claims1, 6-7,11, 15-16, 20, 22-24, 26 and 28-30 above, and further in view of Hein et al. (SNMP, Simple Network Management Protocol Version 2).

10. As to claims 4, 5, 9, and 14 and 18 receiving a message including an identifiers indicating a change to a partition on said storage device and extracting from said message an identifier which specifies the information to upload to said server and uploading the specified information to said server which specifies a task to perform on a storage device (see Reisacher , col. 6, lines 29-32, col. 5, line 66 – col. 6, line 15, in combination with Page 339- 340 of Hein et al.).

11. It would have been obvious to combine these references as both are directed to the use of SNMP.

12. As to claims 8,17, 25, and 27, Hein et al. taught extracting a specified time from said message and uploading said data at the specified time (pages 339-340).

13. As to claim 6 and 15, Reisacher taught said message includes a server identifier, and uploading said data to the identified server (fig. 6, col. lines 22-28).

14. Claims 2-3, 12-13 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reisacher as applied to claims1, 6-7,11, 15-16, 20, 22-24, 26 and 28-30 above, and further in view of Lakey et al. (6,078,954).

15. Reisacher did not expressly teach the limitations of claims 2-3, 12-13 and 21.

16. Lakey et al. discloses that most network support three types of addressing unicasting (claims 3 and 13) and Multicasting (claim 21) the combination of multicasting and unicasting meet the requirement of claims 2, and 12. (col. 1) It would have been obvious to combine these references as Lacey et al. taught the application of the system to network maintenance.

(10) Response to Argument

17. Appellant argues that Reisacher does not teach scheduling.

Reisacher teaches a time ordering of event. Reisacher taught that the all the request for information must be received before the response is transmitted, therefore the number of required responses is based on the message received, and only after this happens is the response scheduled to be transmitted.

18. Appellant argues that that the upload session is not scheduled as there is no schedule.

Upon review of the claim, there is no schedule claimed, nor any steps for creating or reading a schedule, set forth in the claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

19. Appellant set forth under no reasonable definition of scheduling could this be described as scheduling a data upload session based on the message.

Appellant only argument on this issue seems to be that Reisacher is not scheduling as Appellant fails to provided any definition of scheduling.

20. Appellant place two substantially the same arguments on the record "Initially, a prima facie rejection is not made out because no rationale to modify or combine is ever set forth. For this reason alone the rejection can be reversed on its face." and "The assertion of some combination with Hein which is unexplained is insufficient to make out a prima facie rejection."

The examiner has set forth that the combination is obvious as both are directed to SNMP, clearly with Reisacher express teaching to us SMNP, one of ordinary skill in the art would be motivated to examine all aspects of the protocol, such as those taught in Hein. Further it should be noted that appellant's arguments against the rejection of the dependent claims are being raised for the first time in the instant Appeal Breif.

21. Appellant argues "Moreover, nothing in any of these references teaches receiving a message including an identifier that specifies a task to perform on a storage device as opposed to a processor-based system."

First, it should be noted that a storage device without some processor-based system capabilities, can not perform the functions attributed to the storage device in the claims. Further Reisacher taught that "The managed system 10 could be a standard workstation having various components including one or more processors and one or more different storage media including read only memory, random access memory, hard and floppy drive devices, tape streamers, etc, and input/output devices such as keyboards, a mouse, a display screen, communications adaptors, and so on."

Therefore Reisacher taught that the processor-based system includes storage devices.

In addition, Reisacher taught that the managed devices can be any component in a system, "Indeed, the managed system could also comprise any managed piece of equipment which has a primary function other than that of data processing, for example a managed component of a production line, retail operation, telecommunications system, and so on. Therefore Appellant's vague reference to processor-based system, in attempt to limit the teaching Is not found persuasive.

Appellant argues " there is no discussion of any identifier used to specify a task and there is no mention of any storage device on which the task would be performed."

Reisacher expressly taught the uses of the identifier to define what task is to be preformed "a)(i) analyzing a request received from said network under a predetermined network management protocol to identify each management operation to be performed and to identify an agent for performing each identified operation;

a)(ii) dividing said received request where more than one agent Is identified;

a)(iii) forwarding, under said protocol, one or more local requests derived from said received request to said respective identified agent or agents;

b)(i) waiting for and receiving a local response under said protocol for each of said local requests from said identified agent or agents; and

b)(ii) forming, from said local response or responses, a response under said protocol to said received request to be transmitted over said network;

wherein said step (a)(i) comprises accessing a routing table to identify management operations performed by each locally connected agent.

The issue of the storage device, has already been addressed.

22. Appellant argues Plainly, for all the reasons above, and the fact that partitions are not even discussed in the cited material, the rejection should be reversed.

As a general rule the courts have held that one of ordinary skill in the art would have knowledge beyond the express teachings of the reference. In this instance partitioning of a storage device is standard operation for assigning task a dedicated region of memory a memory and would be suggested to one of ordinary skill in the art, by Reisacher teaching of " Thus, for example, a server agent might monitor a messaging server and an Internet adaptor and support extensions for handling messages, storing data and traps."

23. Appellant argues " extracting from said message an identifier which specifies the information to upload to the server and uploading the specified information to the server. Again, for the reasons already described with respect to claim 4, the rejection is baseless."

See response to claim 4.

24. Appellant argues Reisacher fails to teach an identifier used to upload and to specify the information to upload to the server.

This is expressly taught by Reisacher "analyzing a request received from the network under a predetermined network management protocol to identify each management operation to be performed and to identify an agent for performing each identified operation; " The identified operations produces the data, which would identify the data, as return clearly it must be differentiated .

25. Appellant set forth that "Claim 14 calls for instructions that enable the system to decode a command within the message to modify the storage of information in the storage device. There is no effort to indicate any instructions that decode a command within a message to modify storage in the storage 'device. No effort is made to specifically identify the basis for the rejection of claim 14 relative to other differently-worded claims and no rationale to modify is ever set forth."

Again as a general rule the courts have held that one of ordinary skill in the art would have knowledge beyond the express teachings of the reference. One ordinary skill in the art would understand that a processor must have instruction in order to operate and that any command must be decoded (determine the operation of the command). See the response to para, 21-22. The issue is not the wording of the claim, but whether the claimed subject matter is taught by the reference.

26. Appellant arguments to claim 18, are substantially the same as above, and addressed by the same rationale. Note that any information from the message must be extracted.

27. Appellant argued the reliance on the German-language reference is improper.

It should be noted that the German-language reference, was supplied by Appellant, and Appellant did not supply a translation, and that the information supplied in the German patent Office action was deemed sufficient by Appellant to convey the relevance of the reference for the purpose of examination.

In response to further Appellant 's arguments against the reference, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The DateandTime field is used to designate a specific time to an automated system, again any information from a message must be extract (separate from the rest of the message so that it can be properly used within the system.

As to appellants, comment on claim 19, it should be noted that it is inherent in internet protocols that the senders address is sent, in the header of the packet, so that the responder will send the response to the proper location.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Glenton Burgess
Supervisory Primary Examiner

Conferees:

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